(2)

No. 94-1201

FILED
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In The

Supreme Court of the United States

October Term, 1994

KARL BLANKENBURG, JOHN CRUZ, CHARLES FURLOTTE, ROBERT KUSCHEL, JOSEPH LAUGHHUNN, ROBERT LEDBETTER, DAVID MARGOLIS, DAVID McEACHIN, ROBERT STEPHENS, JEROME WILSON, ROBERT UDELL, present or former Trustees of the Pattern & Model Makers Association of Warren & Vicinity Pension Fund (Defined Benefit) and MID-CONTINENTAL CLAIM SERVICE AND ADMINISTRATORS, INC., GARY NOVARA, and LAURENCE BRESKIN,

Petitioners,

v.

GARY CORBIN, in his capacity as a Trustee and Fiduciary of The Pattern & Model Makers Association of Warren & Vicinity Pension Fund (Defined Benefit),

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE EN BANC DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT THAT ERISA DOES NOT MANDATE ABATEMENT OF AN ACTION PROPERLY BROUGHT BY AN ERISA TRUSTEE WHEN THAT TRUSTEE RESIGNS HIS OFFICE AND A MOTION TO SUBSTITUTE A SUCCESSOR TRUSTEE PREPARED TO GO FORWARD WITH THE LITIGATION IS PENDING WAS CORRECT.

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No. 94-1201

In The

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KARL BLANKENBURG, JOHN CRUZ, CHARLES FURLOTTE, ROBERT KUSCHEL, JOSEPH LAUGHHUNN, ROBERT LEDBETTER, DAVID MARGOLIS, DAVID McEACHIN, ROBERT STEPHENS, JEROME WILSON, ROBERT UDELL, present or former Trustees of the Pattern & Model Makers Association of Warren & Vicinity Pension Fund (Defined Benefit) and MID-CONTINENTAL CLAIM SERVICE AND ADMINISTRATORS, INC., GARY NOVARA, and LAURENCE BRESKIN,

Petitioners,

v.

GARY CORBIN, in his capacity as a Trustee and Fiduciary of The Pattern & Model Makers Association of Warren & Vicinity Pension Fund (Defined Benefit),

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

To The Honorable Supreme Court:

Respondent Gary Corbin respectfully requests that the Court deny the Petition for Writ of Certiorari seeking

review of the decision of the United States Court of Appeals for the Sixth Circuit in this case.

STATEMENT OF THE CASE

On May 30, 1991, Respondent Gary Corbin, a trustee of a multi-employer defined benefit pension fund, filed a civil action in the United States District Court for the Eastern District of Michigan pursuant to § 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(3). In his suit, Trustee Corbin, acting on behalf of the participants and beneficiaries of that Fund, alleged that defendants, current and former trustees, as well as non-fiduciary service providers had committed a series of violations of ERISA, resulting in substantial economic harm to the Fund and, therefore, to the participants and beneficiaries of that Fund. Pet. App. at 21a.

Three (3) of the named defendants were current trustees of the then seven (7) member Board of Trustees. When the action was brought, there was a vacancy on the Board of Trustees which had existed for several months.

On December 20, 1991, for reasons unrelated to this litigation, Respondent resigned his position as a trustee of the Fund. Pet. App. at 21a. The course of the litigation, however, continued unabated with extensive discovery being conducted by deposition, interrogatory and document production. There were discovery disputes, some of which were referred to a Magistrate. Several motions,

including Petitioners' motion for summary judgment, were filed after December 20, 1991. App. at pp.8-17.

On February 25, 1992, both trustee vacancies on the Fund were filled. One of those vacancies was filled by Paul Gard. Pet. App. at 3a.

On March 19, 1992, Petitioners filed a motion to dismiss arguing that since Trustee Corbin had resigned he no longer had standing pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) to prosecute the civil action. Pet App. at 3a.

Within three (3) working days, on March 24, 1992, Mr. Corbin filed a motion to add or substitute his successor trustee, Paul Gard, as a party-plaintiff under the provisions of Fed. R. Civ. P. 25(c). His motion was accompanied by Mr. Gard's affidavit swearing he was the successor to Mr. Corbin, that he desired to pursue the allegations of the amended complaint on behalf of and for the benefit of the plan and that he was prepared to act as a party-plaintiff. The Petitioners protested Mr. Gard's substitution arguing there had been no "transfer of interest" within the meaning of Fed. R. Civ. P. 25(c). Pet. App. at 4a.

On March 26, 1992, the District Court held a hearing at which a number of pending motions including Petitioners' motion to dismiss and Trustee Corbin's Rule 25(c) motion to add or substitute Trustee Gard were scheduled to be heard. After a brief oral argument on the motion to dismiss, the court rendered an oral ruling. In its ruling, the court determined that it had lost jurisdiction on the date of Mr. Corbin's resignation because he lost his standing as a fiduciary on that date. Moreover, the court

decided to ignore the motion to substitute Mr. Gard despite finding that Mr. Gard had standing under ERISA to bring a claim. The court concluded by holding that Rule 25(c) could not be used to restore jurisdiction after it had been lost unless it survived as a matter of substantive law. Because the Court found ERISA did not preclude abatement, it granted the motion to dismiss. Pet. App. at 4a-5a.

A timely appeal was filed by Mr. Corbin on April 29, 1992.

A divided panel of the Court of Appeals affirmed the District Court's dismissal. A subsequent petition for rehearing en banc was granted and after briefing and oral argument, the full court reversed and remanded to the District Court with instructions to substitute Mr. Gard.[1] Pet. App. at 5a, 10a.

In its opinion, the Court of Appeals first noted that Trustee Corbin had standing to bring his action from the inception of the District Court action. Thus, the court had jurisdiction of the action when it was filed. Citing the "common law of trusts" and hornbook law, the court noted that an action brought by a trustee is not normally abated on the trustee's failure to continue in office. If a trustee left office, the action would be revived in the name of the successor representative. Finally, the court noted that ERISA neither makes the action of an ERISA trustee personal to that individual nor requires that the

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[1] The District Court ordered the substitution of Mr. Gard for Mr. Corbin on November 17, 1994.

action be abated without any chance of revival when the original trustee leaves office. Pet. App. at 6a-7a.

Citing 29 U.S.C. § 1001(b), the en banc panel of the Court of Appeals addressed Congress's aversion to an abatement rule in ERISA cases. Congressional unwillingness to require abatement was particularly strong when, as here, a new lawsuit commenced by a successor trustee, participant or beneficiary suing in their own capacity would have been met by a substantial statute of limitations defense. The Court of Appeals found the District Court's decision to abate an ERISA proceeding inapposite to the Congressional policy and to this Court's determination that the purpose of ERISA was to protect the well-being and security of the millions of employees covered by or otherwise affected by ERISA protected benefits (citing *Central States Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559 at 569 (1985)). Pet. App. at 7a-8a.

The Court of Appeals found that the District Court decision was at odds with the Federal Rules of Civil Procedure. The court cited Rule 17(a)'s provision that an action should not be dismissed on the basis that it was not prosecuted in the name of the real party in interest until a reasonable time had been allowed for joinder or substitution of the real party in interest. It also cited the relation back provisions of that Rule, where applicable, noting that only three (3) working days had passed between the defendants' objection to Plaintiff Corbin's standing and the filing of his motion to add or substitute Mr. Gard. Pet. App. at 9a.

Relying on the fact that subject matter jurisdiction was not irretrievably lost the instant that Plaintiff Corbin resigned his trusteeship and that once jurisdiction validly exists among the original parties it remains intact after substitution, the court found that the substituted party stepped into the place of the original party.

The court went on to find that the "stepping in" of a successor trustee related back to when the predecessor trustee had standing to sue, relying on Rule 17(a) and Rule 15(c) of the Federal Rules of Civil Procedure. Finally, the court, citing Rule 15(a)'s provision that leave to amend is to be freely given when justice requires, found that, if Congress meant what it said in ERISA, justice required granting the substitution of a fully qualified plaintiff. Pet. App. at 9a-10a.

SUMMARY OF THE ARGUMENT

Although ERISA provides a listing of those individuals who may bring suit to enforce its provisions, it does not specifically provide for when or if an action is abated upon the resignation of a properly constituted trustee plaintiff. The common law of trusts, Congressional intent in ERISA and the provisions of Fed. R. Civ. P. 15(a) and (c) and 17(a) all support allowing a properly constituted successor trustee to replace the resigning trustee without abating the underlying action.

Petitioners have failed to cite a single decision of a Court of Appeals or of this Court which conflicts with the decision below. To the contrary, this Court's decisions in

Central States and *Ingersoll-Rand v. McClendon* support that decision.

REASONS FOR DENYING THE WRIT

The Decision Of The Sixth Circuit Court Of Appeals Accurately Reflects The Intent Of Congress In ERISA As Well As Prior Decisions Of This Court.

When Gary Corbin filed this action in his representative capacity as an ERISA fund trustee, he met all of the statutory standing requirements of ERISA embodied in 29 U.S.C. § 1132(e). Similarly, when he moved for the substitution of Paul Gard, the trustee who succeeded him on the fund, Mr. Gard also met all of the standing and jurisdictional requirements of ERISA. Although Mr. Corbin resigned his position as a trustee in December, 1991, no objection to his standing was raised by anyone until March, 1992. It is also true that due to the inaction of the remaining fund trustees, there were no replacement trustees appointed for the vacancies that existed on the fund until February 25, 1992. Finally, the record reveals that the majority of the case activities which took place in the District Court occurred between the dates of Mr. Corbin's resignation and the Petitioners' motion to dismiss. See docket sheet attached as Appendix A to this Brief. The Court of Appeals reviewed these facts and found the intent of Congress expressed in 29 U.S.C. § 1001(b) (as well as by this Court in *Central States*) was that ERISA's goal and purpose was to protect the retirement benefits of covered individuals, a goal consistent with the common law of trusts.

Further, the court found that the provisions of Fed. R. Civ. P. 17(a), prohibiting dismissal of an action not prosecuted in the name of the real party in interest until a reasonable time had been allowed for objection and/or a substitution, were violated by the District Court's dismissal of this action. Moreover, the relation-back provisions of Fed. R. Civ. P. 17(a) and 15(a) and (c) were consistent with continuation of an ERISA action without abatement when one trustee leaves and another takes his place. The Court of Appeals' decision is narrowly constructed, conforms to the facts of the case, does not create any broad-based mandate for non-ERISA actions and is consistent with ERISA and with the provisions of the Federal Rules of Civil Procedure.

Petitioners can show no harm from the decision of the Court of Appeals. On the contrary, as the Sixth Circuit noted, because of the impact of the statute of limitations, the majority of the violations asserted in this litigation would be barred if the decision of the District Court is sustained. In contrast, Petitioners' advocacy of a decision favoring abatement of an ERISA fiduciary action rings hollow where the alleged malefactors would be the only beneficiaries. Further, if the allegations of the action are ultimately sustained, the fund participants and beneficiaries will substantially benefit from a healthier and stronger fund, exactly as Congress intended. In summary, there simply are no policy implications favoring the position espoused by the Petitioners here.

Petitioners' unsupported protestations notwithstanding, there is no wide ranging impact of this decision upon the Federal Rules of Civil Procedure. The decision of the Court of Appeals is not in any way a nullification of Fed.

R. Civ. P. 12(h)(3), nor is there created any obligation on the part of the judiciary to "cure jurisdictional defects" as asserted by Petitioners.

The Decision Of The Sixth Circuit Court Of Appeals Is Consistent With Prior Decisions Of This Court And Does Not Conflict With The Cited Decisions Of Either The Second Or Fifth Circuits.

Petitioners have misconstrued the decision of the Second Circuit Court of Appeals in *Pressroom Unions - Printers League Income Security Fund v. Continental Assurance Co.*, 700 F.2d 889, 890 (2nd Cir. 1983), cert. denied, 464 U.S. 845, 104 S.Ct. 148 (1983). In *Pressroom Union*, an ERISA fund filed an action seeking recovery for the improper behavior of certain fiduciaries and non-fiduciaries of the fund. The District Court dismissed the action on the grounds that the fund was not a party authorized to bring suit under ERISA. On the subsequent motion for reconsideration, the court reiterated its position.[2]

Affirming the District Court's action, the Court of Appeals for the Second Circuit explicitly found the District Court was without subject matter jurisdiction *from the inception* of the fund's complaint because the fund

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[2] In its decision on the request for reconsideration the court noted that in its original decision it had, in a footnote, stated that "the fund has not identified such a party or indicated that any party is willing to be so substituted. Since this court lacks jurisdiction over the fund's claims, I can hardly retain jurisdiction while the fund searches for a substitute plaintiff. *Prior to the dismissal of this action, a proper plaintiff might have moved to intervene, but no such application has been made.*" 3 EBC 1950 (D.Ct. S.D.N.Y., 1982) (emphasis supplied)

never had standing to bring the action. In the present case, both the original plaintiff and the proposed substituted plaintiff had standing to bring and prosecute the action in the name of the beneficiaries and participants of the fund. Thus, the *Pressroom Union* case not only is factually inapposite, but in no way conflicts with the decision of the Court of Appeals for the Sixth Circuit in this case.

Similarly, Petitioners' efforts to identify *Flournoy v. Trust Company of Columbus (In Re Weaver)*, 632 F.2d 461 (5th Cir. 1980) as conflicting with the Court of Appeals decision in this case is without merit. In *Flournoy*, a Chapter XIII bankruptcy proceeding, a trustee brought a Truth-In-Lending Act claim on behalf of the wage earner against a creditor. Finding that the District Court erred in holding the trustee lacked standing to bring the Truth-In-Lending Act claim, the Court of Appeals noted that it was the goal of Congress to use private suits to enforce the Truth-In-Lending Act and that if a trustee could not bring such actions, the plaintiff would be barred by the statute of limitations.

Petitioners' reference to *Flournoy* is puzzling because there is no issue of substitution, there is no question of relating back or any other issue involved in this case other than the authority of a trustee to bring an action on behalf of another party. If anything, *Flournoy* supports the decision of the Sixth Circuit here because it relies on the intention of Congress to secure compliance with the Truth-In-Lending Act through private suits against creditors.

> "We conclude that the trustee was authorized to bring these truth-in-lending actions on behalf of the wage earners. Such a holding, we believe, is consistent with the language of Chapter XIII, furthers the purposes of the Truth-In-Lending Act and promotes judicial economy." 632 F.2d at 465

Petitioners reliance on *Mertens v. Hewitt Associates*, 508 U.S. ___, 113 S.Ct. 2063, 124 L.Ed.2d 161 (1993) is also inappropriate. Their citation to *Mertens* deals with the issue of whether or not liability can be established under ERISA where there is no specific language providing for the asserted liability. The issue in the present case, however, is the question of whether or if a trustee's properly filed ERISA action is instantly abated when that trustee resigns his position with the fund. There is no language in ERISA or in *Mertens* dealing with that specific issue. There is, however, a basic purpose section in which Congress set out its goals and intentions (§ 1001(b)). This Court, in *Central States*, acknowledged Congress' purpose and noted Congress' reliance on the common law of trusts to define the general scope of plan fiduciary's authority and responsibility, see 472 U.S. 570.

This Court has acknowledged the importance of private actions enforcing ERISA. See *Ingersoll-Rand v. McClendon*, 498 U.S. 133, 137, 112 L.Ed.2d 474, 482-483 (1990), where a unanimous court reiterated:

> "ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans.
>
> *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 90, 77 L.Ed.2d 490, 103 S.Ct. 2890 (1983).

> 'The statute imposes participation, funding and vesting requirements on pension plans. It also sets various uniform standards, including rules concerning reporting, disclosure and fiduciary responsibility for both pension and welfare plans.' Id., at 91, 77 L.Ed.2d 490, 103 S.Ct. 2890 (citation omitted)
>
> *As part of this closely integrated regulatory system Congress included various safeguards to preclude abuse and 'to completely secure the rights and expectations brought into being by this landmark reform legislation.'* S.REP. No. 93-127, p.36 (1973). Prominent among these safeguards are three (3) provisions of particular relevance to this case . . . ; and *§ 502(a), 29 U.S.C. § 1332(a)* (29 U.S.C.S. § 1332(a)), a *'carefully integrated' 'civil enforcement scheme' that 'is one of the essential tools for accomplishing the stated purposes of ERISA.' Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52, 54, 95 L.Ed.2d 39, 107 S.Ct. 1549 (1987), (emphasis supplied)."

It is apparent that the instant abatement of a properly brought ERISA trustee action due to the resignation of the plaintiff trustee is inconsistent with the purpose of ERISA as stated by Congress and found by this Court. Consistent with the Federal Rules of Civil Procedure and ERISA, the appropriate procedure is to permit a reasonable period of time in which to substitute a properly constituted party with standing to continue the action unabated and, thereby, protect the rights of the very individuals Congress sought to protect when it passed ERISA.

Contrary to their assertions, Petitioners have failed to identify any decision by any Court of Appeals which is contrary to these principles.

CONCLUSION

There is no basis on the facts of this case, in the provisions of ERISA or in the provisions of the Federal Rules of Civil Procedure to justify the decision of the District Court to instantly abate the properly brought ERISA action of Trustee Gary Corbin against the Petitioners here. The period of time between Petitioners' objection to his standing and the motion to substitute a fully qualified successor trustee was minimal. There has never been a showing of harm to the Petitioners from the proposed substitution. There has, however, been demonstrated substantial harm to the participants and beneficiaries of the fund if that substitution is not permitted. The en banc decision of the United States Court of Appeals for the Sixth Circuit was carefully and narrowly drawn and supported by the facts, as well as the precedent of this Court. It does not conflict with the decisions of any other circuit. There is, therefore, no basis upon which a petition of certiorari is appropriate.

Respondent Gary Corbin prays that this Court deny Petitioners' Petition for Writ of Certiorari because the case presents no issue appropriate for this Court's review, and because the lower court's holdings were not in error.

Respectfully submitted,

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Dated: February 9, 1995

Docket as of May 4, 1992 2:44 pm CLOSED

U.S. District Court
for the Eastern District of Michigan (Detroit)

CIVIL DOCKET FOR CASE #: 91-CV-72595

Corbin v. Blankenburg, et al
Assigned to:
Judge George E. Woods
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 5/30/91

Nature of Suit: 791
Jurisdiction: Federal Question

Cause: 29:1132 E.R.I.S.A. – Employee Benefits

GARY CORBIN, in his capacity as a Trustee and fiduciary of the Pattern & Model Makers Association of Warren & Vicinity Pension Fund plaintiff	A. Read Cone, III [COR LD NTC ret] Roberto L. Mercado [COR NTC ret] Robert I. Hunter [COR NTC ret] Dean & Fulkerson 801 W. Big Beaver Road Fifth Floor Troy, MI 48084 313-362-1300
v.	
KARL BLANKENBURG defendant	H. David Kelly, Jr. [COR LD NTC] Novara, Tesija, 2000 Town Center Suite 2370 Southfield, MI 48075-1135 313-354-0380
JOHN CRUZ defendant	H. David Kelly, Jr. (See above) [COR LD NTC]

CHARLES FURLOTTE defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
ROBERT KUSCHEL defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
JOSEPH LAUGHHUNN defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
ROBERT JOE LEDBETTER defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
DAVID MARGOLIS defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
DAVID MCEACHIN defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
ROBERT STEPHENS defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
JEROME WILSON defendant	H. David Kelly, Jr. (See above) [COR LD NTC]
ROBERT UDELL defendant	H. David Kelly, Jr. (See above) [COR LD NTC]

MID-CONTINENTAL CLAIM SERVICE AND ADMINISTRATORS, INCORPORATED defendant	Lorrey J. Cochran [COR LD NTC] Ronald A. Weglarz [COR LD NTC] Novara, Tesija, 2000 Town Center Suite 2370 Southfield, MI 48075-1135 313-354-0380
GARY NOVARA defendant	Lorrey J. Cochran (See above) [COR LD NTC] Ronald A. Weglarz (See above) [COR LD NTC]
LAURENCE BRESKIN defendant	Lorrey J. Cochran (See above) [COR LD NTC] Ronald A. Weglarz (See above) [COR LD NTC]

5/30/91	1	COMPLAINT filed, si – Receipt # 267939 – Date Fee Received: 5/30/91 (lp) [Entry date 06/04/91]
6/6/91	2	AMENDED complaint # 1 by plaintiff Gary Corbin to remedy breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974 with exhibits and proof of mailing. (lp) [Entry date 06/07/91]
7/2/91	3	MOTION by defendants for a more definite statement with brief and proof of mailing. (lp) [Entry date 07/03/91]

7/9/91	4	ORDER by Judge George E. Woods, referring motion for a more definite statement by defendant [3-1] to Magistrate Marcia G. Cooke, for hearing and determination (lp) [Entry date 07/10/91]
7/11/91	–	SCHEDULE: hearing on motion for a more definite statement by defendant [3-1] set for 9:30 8/6/91 before Magistrate Marcia G. Cooke (rt)
7/12/91	5	NOTICE by Magistrate/Judge Cooke of hearing on motion for a more definite statement by defendant [3-1], and for a response to be filed (lp) [Entry date 07/15/91]
7/12/91	6	AMENDED notice of hearing on motion for a more definite statement by defendant [3-1], and for a response to be filed (lp) [Entry date 07/15/91]
7/22/91	7	ACKNOWLEDGMENT of service of summons and complaint by defendant David Margolis – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	8	ACKNOWLEDGMENT of service of summons and complaint by defendant David McEachin – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	9	ACKNOWLEDGMENT of service of summons and complaint by defendant Mid-Continental – received on (no date specified) (SB) [Entry date 07/23/91]

7/22/91	10	ACKNOWLEDGMENT of service of summons and complaint by defendant Gary Novara – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	11	ACKNOWLEDGMENT of service of summons and complaint by defendant Robert Stephens – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	12	ACKNOWLEDGMENT of service of summons and complaint by defendant Robert Udell – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	13	ACKNOWLEDGMENT of service of summons and complaint by defendant Jerome Wilson – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	14	ACKNOWLEDGMENT of service of summons and complaint by defendant John Cruz – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	15	ACKNOWLEDGMENT of service of summons and complaint by defendant Laurence Breskin – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	16	ACKNOWLEDGMENT of service of summons and complaint by defendant Karl Blankenburg – received on (no date set) (SB) [Entry date 07/23/91]
7/22/91	17	ACKNOWLEDGMENT of service of summons and complaint by defendant Joseph

		Laughhunn – received on (no date specifie [sic]) (SB) [Entry date 07/23/91]
7/22/91	18	ACKNOWLEDGMENT of service of summons and complaint by defendant Robert Kuschel – received on (no date specified) (SB) [Entry date 07/23/91]
7/22/91	19	ACKNOWLEDGMENT of service of summons and complaint by defendant Charles Furlotte – received on (no date specifie [sic]) (SB) [Entry date 07/23/91]
7/30/91	20	RESPONSE by plaintiff to motion for a more definite statement by defendant [3-1] with brief and proof of mailing. (lp) [Entry date 08/01/91]
8/21/91	21	ORDER by Magistrate Marcia G. Cooke denying motion for a more definite statement by defendant [3-1], and denying request for sanctions and deadline for answer to amended complaint [2-1] (lt) [Entry date 08/23/91]
8/29/91	22	ANSWER by defendants Karl Blankenburg, John Cruz, Charles Furlotte, Robert Kuschel, Joseph Laughhunn, Robert Joe Ledbetter, David Margolis, David McEachin, Robert Stephens, Jerome Wilson, Robert Udell to complaint [1-1] with proof of mailing. (lp) [Entry date 09/04/91]
8/29/91	22	AFFIRMATIVE defenses by Karl Blankenburg, John Cruz, Charles Furlotte, Robert

		Kuschel, Joseph Laughhunn, Robert Joe Ledbetter, David Margolis, David McEachin, Robert Stephens, Jerome Wilson, Robert Udell (lp) [Entry date 09/04/91]
9/5/91	23	ANSWER by Mid-Continental, Gary Novara, and Laurence Breskin to complaint [1-1] (lp) [Entry date 09/09/91]
9/5/91	23	AFFIRMATIVE defenses by Mid-Continental, Gary Novara, and Laurence Breskin (lp) [Entry date 09/09/91]
9/5/91	24	AMENDED answer by defendants Karl Blankenburg, John Cruz, Charles Furlotte, Robert Kuschel, Joseph Laughhunn, Robert Joe Ledbetter, David Margolis, David McEachin, Robert Stephens, Jerome Wilson, Robert Udell to amended complaint by Gary Corbin [2-1] (lp) [Entry date 09/09/91]
9/5/91	24	AFFIRMATIVE defenses by Karl Blankenburg, John Cruz, Charles Furlotte, Robert Kuschel, Joseph Laughhunn, Robert Joe Ledbetter, David Margolis, David McEachin, Robert Stephens, Jerome Wilson, Robert Udell (lp) [Entry date 09/09/91]
9/5/91	25	PROOF of mailing of pleadings 23 and 24. (lp) [Entry date 09/09/91]
9/25/91	–	SCHEDULE: deadline for discovery set for 2/3/92, deadline for filing dispositive

		motions set for 2/14/92, final pretrial conference set for 1:00 4/14/92, non-jury trial set for 8:30 5/4/92 before Judge George E. Woods (rh)
9/25/91	26	PRETRIAL order by Judge George E. Woods (lp) [Entry date 09/27/91]
12/2/91	27	RESCHEDULED NOTICE of taking deposition of Gary Corbin 12/17/91 at 10:00 am NSI with proof of mailing (ld) [Entry date 12/03/91]
12/27/91	28	PROOF of mailing of plaintiff's request for production of documents. (mc) [Entry date 12/30/91]
12/30/91	29	PROOF of mailing of copy of plaintiff's first request for production of documents and first request fpr [sic] production o9f [sic] documents (1054) [Entry date 01/02/92]
1/2/92	30	PROOF of mailing of plaintiff's objections to defendants' first interrogatories, request for production of documents and request for admissions (1076) [Entry date 01/03/92]
1/6/92	31	MOTION by defendants' to compel answers to interrogatories over plaintiff's objections with brief, attachments and proof of mailing (1054) [Entry date 01/07/92]

1/8/92	32	PROOF of mailing of plaintiff's answer and response to defendants' first interrogatories and request for production of documents and request for admissions (1076) [Entry date 01/09/92]
1/10/92	33	ORDER by Judge George E. Woods referring motion to compel answers to interrogatories over plaintiff's objections by defendant [31-1] to Magistrate Marcia G. Cooke for hearing and determination (1099) [Entry date 01/13/92]
1/13/92	–	SCHEDULE: by Magistrate Marcia G. Cooke hearing on motion to compel answers to interrogatories over plaintiff's objections by defendant [31-1] set for 10:30 1/24/92, and deadline for response to motion to compel answers to interrogatories over plaintiff's objections by defendant [31-1] set for 1/21/92 (1087)
1/13/92	34	NOTICE of hearing on motion to compel answers to interrogatories over plaintiff's objections by defendant [31-1] (1054) [Entry date 01/15/92]
1/21/92	35	RESPONSE by defendant Jerome Wilson to motion to compel answers to interrogatories over plaintiff's objections by defendant [31-1] with brief and attachments. (1054)
1/22/92	36	PROOF of mailing plaintiff's first set of interrogatories and second request for

production of documents (1099) [Entry date 01/23/92]

1/23/92 37 PROOF of mailing notice of taking depositions (1092)

1/24/92 – MOTION hearing held on motion to compel answers to interrogatories over plaintiff's objections by defendant [31-1] – disposition: granted in part and denied in part – Magistrate Marcia G. Cooke – Court Reporter: Tape MC-92-8 (1087)

1/24/92 38 MOTION by plaintiff Gary Corbin to extend discovery to 4/14/92, deadline for filing motions to 3/16/92 with brief and proof of mailing. (1052) [Entry date 01/27/92]

1/31/92 39 ORDER by Magistrate Marcia G. Cooke granting in part and denying in part motion to compel answers to interrogatories over plaintiff's objections by defendant [31-1] (1099)

2/5/92 – SCHEDULE: by Judge George E. Woods deadline for discovery set for 3/20/92, deadline for filing dispositive motions set for 3/27/92, final pretrial conference set for 1:00 5/12/92, non-jury trial set for 8:30 6/1/92 (1057)

2/5/92 40 PROOF of mailing of plaintiff's supplemental answers. (1052) [Entry date 02/06/92]

2/5/92	41	ORDER by Judge George E. Woods granting motion to extend discovery to 4/14/92 by Gary Corbin [38-1] (1052) [Entry date 02/06/92]
2/10/92	42	MOTION by defendants for summary judgment with brief, attachments and notice of hearing (date to be set by the court) (1092) [Entry date 02/11/92]
2/10/92	43	MOTION by defendants to vacate order extending discovery, or to enter protective order staying discovery pending the court's ruling on defendants' motion for summary judgment with brief, attachments, proof of mailing and notice of hearing (date to be set by the court) (1092) [Entry date 02/11/92]
2/13/92	–	SCHEDULE: by Judge George E. Woods hearing on motion for summary judgment by defendant [42-1] set for 2:00 3/9/92 (1057)
2/18/92	44	MOTION by plaintiff Gary Corbin for order compelling discovery, and for sanctions for defendants' contempt of court's order extending discovery dated 2/4/92 with brief, exhibits and proof of mailing (1054)
2/18/92	45	RESPONSE by plaintiff Gary Corbin to motion to vacate order extending discovery by defendants [43-1], motion to enter

protective order staying discovery pending the court's ruling on defendant's motion for summary judgment by defendant [43-2] with exhibits and proof of mailing. (1054)

2/19/92 46 AFFIDAVIT of Janice Szalay (1054) [Entry date 02/20/92]

2/21/92 47 ORDER by Judge George E. Woods denying motion to vacate order extending discovery by defendant [43-1] with proof of mailing. (1054) [Entry date 02/24/92]

2/25/92 48 ORDER by Judge George E. Woods, referring motion for order compelling discovery by Gary Corbin [44-1], motion sanctions for defendants' contempt of court's order extending discovery dated 2/4/92 by Gary Corbin [44-2] to Magistrate Marcia G. Cooke (1092) [Entry date 02/26/92]

2/26/92 49 RESPONSE by plaintiff Gary Corbin to motion for summary judgment by defendant [42-1] with brief, affidavit and proof of mailing. (1052) [Entry date 02/27/92]

2/26/92 50 EXHIBITS filed by plaintiff Gary Corbin (1052) [Entry date 02/27/92]

2/26/92 52 REPLY by defendant to motion response by Gary Corbin [45-1] with attachment and proof of mailing. (1052) [Entry date 03/02/92]

2/26/92 53 AFFIDAVITS by defendants Karl Blankenburg, John Cruz, Robert Kuschel, Charles Furlotte, Robert Joe Ledbetter, Joseph Laughhunn, David McEachin, David Margolis, Mid-Continental, Robert Udell, Jerome Wilson, Robert Stephens, Laurence Breskin regarding response reply [52-1] (1052) [Entry date 03/02/92]

2/27/92 51 NOTICE of deadline for response to motion for order compelling discovery [44-1] and for sanctions for defendants' contempt of court's order extending discovery dated 2/4/92 by Gary Corbin [44-2] (1054) [Entry date 02/28/92]

2/28/92 – SCHEDULE: by Magistrate Marcia G. Cooke hearing on motion for order compelling discovery by Gary Corbin [44-1], motion for sanctions for defendants' contempt of court's order extending discovery dated 2/4/92 by Gary Corbin [44-2] set for 9:30 3/12/92, and deadline for response to motion for order compelling discovery by Gary Corbin [44-1], motion for sanctions for defendants' contempt of court's order extending discovery dated 2/4/92 by Gary Corbin [44-2] set for 3/5/92 (1087)

3/3/92 54 RESPONSE by defendant to motion for order compelling discovery by Gary Corbin [44-1], motion for sanctions for defendants' contempt of court's order

extending discovery dated 2/4/92 by Gary Corbin [44-2] with affidavit and proof of mailing. (1052) [Entry date 03/04/92]

3/5/92 55 PROOF of mailing of Notice of Taking Deposition (1081) [Entry date 03/06/92]

3/5/92 56 MOTION by defendants' to strike affidavit of Dean G. Holefca with brief, attachment, proof of mailing and notice of hearing without date (1081) [Entry date 03/06/92]

3/5/92 57 REPLY brief by defendants' to motion response by Gary Corbin to defendants' motion to summary judgment [49-1] with attachments and proof of mailing (1081) [Entry date 03/06/92]

3/9/92 58 REPLY by plaintiff Gary Corbin to defendant Karl Blankenburg response to motion to compel discovery and for contempt sanction [54-1] with exhibits and proof of mailing (1081) [Entry date 03/10/92] [Edit date 03/10/92]

3/10/92 59 RESPONSE by plaintiff Gary Corbin to motion to strike affidavit of Dean G. Holefca by defendant [56-1] with brief, attachments and proof of mailing (1081) [Entry date 03/12/92] [Edit date 03/12/92]

3/10/92 60 PROOF of mailing – notice of taking deposition (1081) [Entry date 03/12/92]

3/10/92 61 PROOF of mailing – notice of taking deposition of David Margolis (1081) [Entry date 03/12/92]

3/12/92 – MOTION hearing held on motion for order compelling discovery by Gary Corbin [44-1], motion for sanctions for defendants' contempt of court's order extending discovery dated 2/4/92 by Gary Corbin [44-2] – disposition: Granted – Magistrate Marcia G. Cooke – Court Reporter: Tape MC-92-35 (1087)

3/12/92 62 PROOF of mailing – plaintiff's supplemental answers to defendants first set of interrogatories, request for production of docuiments [sic] and request for admission (1081) [Entry date 03/16/92]

3/12/92 63 SUPPLEMENTAL response to defendants' reply brief by Gary Corbin [58-1] with proof of mailing (1081) [Entry date 03/16/92] [Edit date 03/16/92]

3/12/92 64 NOTICE by defendant of hearing on motion for summary judgment by defendant [42-1] (1081) [Entry date 03/16/92]

3/12/92 65 ORDER by Magistrate Marcia G. Cooke granting motion for sanctions for defendants' contempt of court's order extending discovery dated 2/4/92 by Gary Corbin [44-2] (1081) [Entry date 03/16/92]

3/13/92 – SCHEDULE: by Judge George E. Woods hearing on motion for summary judgment by defendant [42-1] set for 2:00 3/19/92 (1057)

3/13/92 66 PROOF of mailing – plaintiff's notices of taking deposition for Laurence Breskin, David Margolis, Gary Novara and Jerome Wilson (1081) [Entry date 03/17/92]

3/16/92 67 REPLY by defendants' Karl Blankenburg, John Cruz, Robert Kuschel, Charles Furlotte, Robert Joe Ledbetter, Joseph Laughhunn, David McEachin, David Margolis, Mid-Continental, Robert Udell, Jerome Wilson, Robert Stephens, Laurence Breskin and Gary Novara to motion response by Gary Corbin [59-1] with attachment and proof mailing (1081) [Entry date 03/18/92]

3/17/92 68 MOTION by plaintiff Gary Corbin for an order extending discovery with brief, exhibits and proof of mailing (1081) [Entry date 03/20/92]

3/17/92 69 ANSWER by defendants' to supplement response regarding the suspension of benefits issue [63-1] (1081) [Entry date 03/20/92]

3/17/92 70 NOTICE by plaintiff Gary Corbin of hearing on motion for an order extending discovery by Gary Corbin [68-1] (1081) [Entry date 03/24/92]

3/19/92	–	SCHEDULE: by Judge George E. Woods hearing on motion to strike affidavit of Dean G. Holefca by defendant [56-1] set for 2:00 3/26/92, motion for summary judgment by defendant [42-1] set for 2:00 3/26/92 (1057)
3/19/92	75	MOTION by defendant to dismiss claims of plaintiff with attachments, brief, notice of hearing and proof of mailing (1081) [Entry date 04/02/92] [Edit date 04/02/92]
3/23/92	71	STATEMENT by defendants' of appeal of paragraph 5 of the order in relation to production of documents with attachments and proof of mailing (1081) [Entry date 03/31/92] [Edit date 03/31/92]
3/24/92	74	MOTION by plaintiff Gary Corbin to add or substitute party plaintiff with brief and notice of hearing (1081) [Entry date 04/02/92]
3/24/92	76	RESPONSE brief by plaintiff Gary Corbin to motion to dismiss claims of plaintiff by defendant [75-1] (1081) [Entry date 04/02/92]
3/24/92	77	PROOF of mailing by plaintiff Gary Corbin of response of plaintiff Gary Corbin to defendants' motion to dismiss claims of plaintiff, notice of hearing, motion to add or substitute party plaintiff with brief in support (1081) [Entry date 04/02/92]

3/25/92 78 PROOF of mailing on notice of taking depositions. (1033) [Entry date 04/03/92]

3/25/92 79 RESPONSE by defendants in opposition to motion for order extending discovery [68-1] (1033) [Entry date 04/03/92]

3/25/92 80 MEMORANDUM by defendant in support of motion response [79-1], with exhibits (1033) [Entry date 04/03/92]

3/25/92 81 PROOF of mailing on documents #79 and #80. (1033) [Entry date 04/03/92]

3/25/92 82 RESPONSE by defendants to motion to add or substitute party plaintiff [74-1], with proof of mailing. (1033) [Entry date 04/03/92]

3/26/92 83 AFFIDAVIT of Paul D Gard (1054) [Entry date 04/07/92]

3/31/92 72 ORDER by Judge George E. Woods granting defendant's motion to dismiss and dismissing complaint. (1118) [Entry date 04/01/92]

3/31/92 73 JUDGMENT entered by Judge George E. Woods granting defendants' motion to dismiss, dismissing complaint with proof of mailing. (1118) [Entry date 04/01/92]

4/3/92 84 RESPONSE by plaintiff Gary Corbin to defendants' appeal of portions of Magistrate Judge Marcia Cook's order dated 3/12/92, with proof of mailing. (appeal

not docketed) (1033) [Entry date 04/14/92]

4/8/92 85 MOTION by defendants' for relief from order in reply to response of plaintiff Gary Corbin to defendants' appeal of portions of magistrate Cooke's order date 3/12/92 with brief, notice of hearing and proof of mailing (1081) [Entry date 04/16/92]

4/29/92 86 APPEAL by plaintiff Gary Corbin of order [72-1] to USCA – FEE: paid – Receipt #: 278923 (1045) [Entry date 05/04/92]

5/4/92 87 PROOF of mailing of notice of appeal by plaintiff Gary Corbin to USCA, A. Read Cone/Robert I. Hunter, Lorrey Cochran/ Ronald A. Weglarz and Sandra Kelly (1045)

5/4/92 88 CERTIFIED copy of appeal notice by Gary Corbin [86-1] and docket transmitted to USCA (1045)